Insuring the Sharing Economy: Existing Models, New Models, Traps and Mitigation of Gaps

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The number of Americans participating in the sharing economy (aka the "gig economy" or "collaborative consumption") is growing exponentially. Insurers have been nimble and creative in responding to the changing landscape of the sharing economy, gig workforce, and particular risks associated with these new business models. This article explains the different modes of commerce, corresponding insurance and potential gaps to help mitigate risk and plan ahead. The article also reviews the rise of "on-demand insurance" designed for the sharing economy and new insurance market entrants Slice and Metromile, which seek to provide disruptive models of insurance coverage for the sharing economy and its community.

THE SHARING ECONOMY WILL GENERATE $335 BILLION IN REVENUE BY 2025–TOO BIG TO SHARE AND/OR TOO BIG TO IGNORE?

The sharing economy has had meteoric growth since its inception and is now a billion dollar sector. A December 2014 report from PricewaterhouseCoopers indicated the sharing economy generated $15 billion in revenue, a figure expected to grow to $335 billion in 2025.PricewaterhouseCoopers, The sharing economy 14 (2014), https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf. The sharing economy, which some commentators have suggested is better labeled as the "access economy," involves the sharing of available, accessible or excess goods and services within local communities. This term has become ubiquitous in recent years, which is remarkable in light of the fact that it was formed and coined as recently as 2008. The Oxford Dictionary has included the phrase in its dictionary, defining sharing economy as "an economic system in which assets or services are shared between private individuals, either free or for a fee, typically by means of the Internet."Sharing Economy, Oxford English Dictionary (3d ed. 2017). While the sharing economy includes many sectors such as travel, financing, staffing, and music and video streaming, this article discusses ride sharing and home sharing because they have been the subject of recent insurance and regulatory activity.

The sharing economy arose out of disrupting the current system by blurring the lines between personal and professional. While this proved to be economically lucrative for many, it also created myriad insurance and regulatory issues.

ARE THERE RIDE SHARING INSURANCE GAPS?

In the ride sharing sector, the most common model is for companies to provide technology that connects passengers with owners of vehicles that provide the service of driving them to a specified location for a fee.The Ultimate Guide to Ridesharing: How it Works & What the Future Holds, Ridester.com, https://www.ridester.com/ridesharing-guide/ (last visited Apr. 7, 2017). These companies, in contrast to traditional livery services, are referred to as Transportation Network Companies (TNCs). The largest player in this segment is Uber, which is valued at over $50 billion and operates in over 250 cities worldwide. PricewaterhouseCoopers, The sharing economy 14 (2014), https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf. Its main competitor, Lyft, is worth $5.5 billion and operates in the United States.

Like many sharing economy models, ride sharing and TNCs can create uncertainty as to personal and professional use, and when the two cross-over and diverge. The issue came to light on New Year's Eve 2013, when an Uber driver struck three pedestrians, killing a 6-year-old girl. The Uber Insurance Gap, L.A. Times (Feb. 6, 2014), http://articles.latimes.com/2014/feb/06/opinion/la-ed-uber-insurance-20140206. At the time, Uber denied liability because the driver was not picking up or dropping off an Uber customer when the accident occurred. On the other hand, the driver insisted that he was working for Uber because he had the Uber smartphone application ("app") on and was waiting for a ride request.Id. The accident brought to light a potential gap between the driver's personal automobile insurance and Uber's then commercial insurance program.

Insurance coverage gaps occurred due to the nature of ride sharing. A TNC ride can be broken down into four phases. First, in Period 0, the driver is in the vehicle but the TNC app is turned off and there is no customer interaction. During this time, the driver would be covered by her or his personal automobile insurance. Period 1 begins after the driver turns on the TNC app and is looking to pick up a fare. Period 2 occurs once the driver receives an invitation on the app to pick up the fare and Period 3 commences when the driver picks up a passenger and ends with the drop-off. National Association of Insurance Commissioners, Transportation Network Company Insurance Principles for Legislators and Regulators 4 (Mar. 2015), http://www.naic.org/documents/committees_c_sharing_econ_wg_exposure_adopted_tnc_white_paper_150331.pdf [hereinafter NAIC White Paper].

The highly publicized New Year's Eve accident occurred while the driver was in Period 1. Prior to the accident, TNCs only provided coverage during Period 3.Id. They did not provide Period 1 coverage because no transaction has taken place and there is no passenger in the vehicle. This created a potential insurance coverage gap because the driver's personal automobile insurance also typically excludes coverage if the driver is using the car for commercial, non-personal use, or "for a charge." State Farm Mut. Auto. Ins. Co. v. LogistiCare Solutions, LLC, 751 F.3d 684 (5th Cir. 2014). In *State Farm Mutual Automobile Insurance Company v. Logisticare Solutions, LLC*, the court held that a "for a charge" or livery exclusion excluded personal automobile insurance coverage where the driver received payment amounting to more than the reimbursement of expenses. *State Farm Mut. Auto. Ins. Co. v. LogistiCare Solutions, LLC*, 751 F.3d 684 (5th Cir. 2014). The issue is further complicated because livery exclusions vary between auto policies.

REGULATORS, INSURERS AND TNCS REACT SWIFTLY AND CREATE RIDE SHARING SOLUTIONS

The National Association of Insurance Commissioners published a white paper in April 2015 recommending strategies to resolve the potential gaps in coverage. Recommendations include state legislation requiring insurance to be carried by the TNC or the driver at all times, consumer disclosures regarding the potential for gaps in coverage and the need for new products to be offered by admitted insurers. NAIC White Paper, supra 7.

In response to the white paper, a group consisting of ride sharing businesses such as Uber and insurance companies created their own solution. The product was the TNC Insurance Compromise Model Bill. TNC Insurance Compromise Model Bill (Mar. 26, 2015), http://www.naic.org/documents/committees_c_sharing_econ_wg_related_tnc_insurance_compromise_bill_package.pdf. The model recommends that state laws require coverage during all three periods, but leaves it to lawmakers to decide whether coverage during Period 1 must be fulfilled by the TNC, the driver, or both. Also, the required coverage during Period 2 and 3 follows the same standards required of limousines.

Many states have used the model bill as the basis for legislation to provide coverage for TNC drivers. California was the first state to pass legislation establishing insurance coverage requirements for TNCs. Effective July 1, 2015, California Public Utility Code sections 5432-33 established coverage and disclosure requirements. Cal. Public Utility Code § 5432–33 (West). TNCs must disclose the insurance coverage provided to drivers in writing and advise drivers their personal automobile insurance will not provide coverage for TNC activities. The statute requires TNC companies provide $1 million in liability coverage for Periods 2 and 3. For Period 1, either the driver or the TNC company must maintain primary liability insurance that has limits of $50,000 for injury to a single person; $100,000 for injury to multiple persons; $30,000 for property damage; and, the TNCs must also maintain $200,000 in excess coverage. Most states have since followed with similar legislation setting insurance coverage rules and regulations for TNCs.

ARE THERE REMAINING RIDE SHARING INSURANCE COVERAGE GAPS?

While the industry and lawmakers have attempted to close the potential for insurance coverage gaps, some issues still persist. For example, the laws are unclear whether a driver is covered if he or she has multiple TNC applications on simultaneously (e.g., where for instance a driver drives for Lyft and Uber, which is often the case). Also, Period 1 coverage is still low and some in the industry believe that the minimum limits are rarely sufficient. Uber Insurance Explained, Insurance.com (Aug. 20, 2015), http://www.insurance.com/auto-insurance/uber-insurance.html.

The insurance requirements provided by ride sharing companies vary by state and even by city, and some of the coverage they provide is contingent on the driver's coverage. This could present an issue for drivers who serve an area encompassing more than one state or municipality.

Uber and Lyft do not provide collision coverage for Period 1, resulting in a coverage gap. Here's What You Need to Know About Insuring Yourself with Uber, Time (Sept. 12, 2016), http://time.com/money/4482057/heres-what-you-need-to-know-about-insuring-yourself-with-uber/ There is no legislative safety net concerning this issue because drivers are not required to have collision or comprehensive coverage in any state. State-by-state minimum coverage requirements, 360 Degrees of Financial Literacy, http://www.360financialliteracy.org/Topics/Insurance/Cars-and-Auto-Insurance/State-by-State-Minimum-Coverage-Requirements (last visited Apr. 7, 2017).

ARE THERE REMAINING HOME SHARING INSURANCE COVERAGE GAPS?

In the home sharing sector, the largest player in the market is Airbnb. Airbnb matches hosts who have spare rooms and apartments with guests looking for short term rentals in over 65,000 cities and approximately 190 countries. About

Us, Airbnb, https://www.airbnb.com/about/about-us (last visited Apr. 7, 2017). Operating outside of the traditional hotel or bed-and-breakfast market, Airbnb hosts and guests have created new issues for regulators to address

First, similar to insurance exclusions for ride share drivers, homeowners insurance policies traditionally do not include coverage of homes if rental operations are being carried out on the premises. Instead, insurance companies recommend that hosts purchase commercial coverage, which is generally more expensive. Also, according to a 2016 report from the Insurance Information Institute, many renters do not carry renters insurance, leaving them more exposed to risk than homeowners. Renters Insurance, Insurance Information Institute (2016), http://www.iii.org/fact-statistic/renters-insurance.

Airbnb, which initially did not offer insurance, introduced Host Protection Insurance in January 2015. The policy provides coverage of up to $1 million for property damage. Host Protection Insurance, Airbnb, https://www.airbnb.com/host-protection-insurance (last visited Apr. 7, 2017). The coverage has limits of $1 million per occurrence, $2 million per location and $10 million in aggregate. The policy excludes "(1) intentional acts including: (i) assault and battery or (ii) sexual abuse or molestation — (by the host or any other insured party), (2) loss of earnings, (3) personal and advertising injury, (4) fungi or bacteria, (5) Chinese drywall, (6) communicable diseases, (7) acts of terrorism, (8) product liability, (9) pollution, and (10) asbestos, lead or silica." Generally, this means that the policy will cover a claim if a guest slips and falls while staying at the host's home, but will not cover a claim if a guest damages the host's refrigerator.

REGULATORS, AIRBNB AND INSURERS CREATED HOME SHARING SOLUTIONS

Similar to the quickly developed regulation in the ride sharing sector, legislators have attempted to resolve issues in the home sharing sector. Cities now generally require short-term rental hosts to provide proof of liability insurance that covers short-term rental use. For example, San Francisco, where Airbnb is headquartered, requires hosts or the platform they are using to have liability insurance of no less than $500,000. Office of Short-Term Rental Registry & FAQs, City and County of San Francisco, http://sf-planning.org/office-short-term-rental-registry-faqs (last visited Apr. 7, 2017). However, these regulations may not address potential gaps in current insurance programs, such as the lack of coverage for property damage over $1 million.

Currently, there is no legislation specifying insurance policy requirements or policy limits for short-term rental insurance. Florida Senate Bill 1298 attempted to address this issue by requiring policies to have a minimum of $1 million per occurrence and $2 million per property, but the bill died on calendar.S.B. 1298, 117th Gen. Assemb., Reg. Sess. (Fla. 2015). Massachusetts legislators also introduced House Bill 2618 which required minimum coverage limits for short-term rental hosts, but the language referring to insurance was removed from later drafts of the bill and the bill eventually died in committee. H.B. 2618, 189th Gen. Court (Mass. 2015); H.B. 4236, 189th Gen. Court (Mass. 2016).

THE RISE OF "ON-DEMAND INSURANCE"

Piggybacking on the success of the sharing economy, startups have turned their sights on addressing Airbnb and Uber users' needs with on-demand insurance. Similar to how Airbnb and Uber allow hosts and drivers to provide services when it is convenient, on-demand insurance companies provide insurance only when policy holders demand coverage.

Slice, a New York-based managing general agent with underwriting and issuance authority, provides insurance for on-demand workers and providers. Slice users can turn on and off insurance coverage using a mobile application following a pay-per-use plan. For example, an Airbnb host will only have to pay for insurance coverage while they are renting out their home. Currently, Slice has insurance licenses in some U.S. states and focuses on insurance for short-term rental hosts, but plans on expanding to all states and eventually offering insurance for ride sharing drivers as well.

Another startup providing on-demand insurance is Metromile. Metromile installs a device in users' vehicles that records mileage. Metromile then charges rates based on the total mileage driven, benefiting low mileage drivers. The startup has partnered with Uber to provide Uber drivers coverage only when they are not covered by Uber insurance. This means that drivers only have to pay for insurance when they are not carrying a passenger. Metromile is licensed to operate nationwide and is in the process of expanding its underwriting policies beyond California, Illinois, New Jersey, Oregon, Pennsylvania, Virginia, and Washington.

Since Metromile debuted its new auto insurance program, traditional insurance companies have followed suit. Some major auto insurers have begun to offer coverage for rideshare drivers by extending their personal auto insurance policy through Period 1. This means that drivers who would normally only be covered by the TNC's limited liability policy during Period 1 will now have greater coverage. Farmers Rideshare, Farmers Insurance, https://www.farmers.com/carideshare/ (last visited Apr. 7, 2017); MetLife expands rideshare insurance policy to five states, including California, MetLife (Oct. 12, 2015), https://www.metlife.com/about/press-room/us-press-releases/index.html?compID=182519.

Another major insurer will replace the driver's personal auto insurance and act as the primary insurer whether drivers have rideshare passengers or not. Learn About Ridesharing Insurance, Geico, https://www.geico.com/information/aboutinsurance/ridesharing/ (last visited Apr. 7, 2017). Acting as a hybrid between a personal and commercial policy, under the primary replacement program the pricing falls between the two types of coverages.

While these forms of on-demand insurance may potentially address issues with using traditional insurance for sharing economy services, they also have a few kinks to work out. The main problem with on-demand insurance is that it is the buyer's responsibility to turn coverage on and off. If a buyer forgets to turn coverage on, they will not be covered. This also assumes that buyers will obtain insurance whenever they are engaged in sharing economy services. However, buyers may be more likely to purchase insurance when they are engaged in higher risk activities and not turn on coverage when they believe they are engaging in lower risk activities. This could increase the cost per unit of exposure above what is normal for traditional insurance companies.

As with any new industry, new issues and risks are expected. Regulators and insurers are identifying and addressing risk issues that did not exist five or ten years ago. And, the advent of on-demand insurance is a sign that the insurance industry will once again move swiftly to adapt and address the issues in the changing economy and provide consumer protection and peace of mind.

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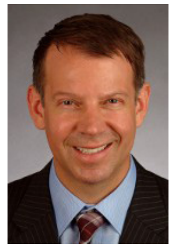

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